

RECEIVED

SEP 14 2015

OPINION COMMITTEE

The State of Texas
House of Representatives

RQ-0053-KP



FILE # ML-47814-15
ID # 47814

Capitol Office: 1W.5
P.O. Box 2910
Austin, Texas 78768-2910
512-463-0596
Fax: 512-463-6504

Joseph C. Pickett
El Paso • District 79

District Office:
1790 Lee Trevino
Suite 307
El Paso, Texas 79936
915-590-4349
Fax: 915-590-4726

September 14, 2015

Honorable Ken Paxton
Attorney General of Texas
P.O. Box 13548
Austin, Texas 78711-2548

Attn: Opinions Committee

Dear A.G. Paxton:

At this time I respectfully request a formal opinion from you, pursuant to Texas Government Code, Chapter 402.042, whether a school board, covered by Section 11.0641 of the Texas Education Code, can post the personal financial statements filed by its school board members.

Section 11.0641 of the Education Code was amended with the passage of House Bill 343 during the 83rd Legislative Session authored by Representative Marquez of El Paso. House Bill 343 was signed by Governor Perry on June 14th, 2013 and came into effect on Jan. 1, 2014.

House Bill 343 amended the Education Code to require each member of the board of trustees of an independent school district located in a county on the international border and in which a municipality with a population of 600,000 or more is located to file a financial statement with both the board and the commissioners court of the county in which the school district's central administrative office is located in the same manner and under the same conditions as if the trustee were a state officer filing with the Texas Ethics Commission. The bill's provisions expire January 1, 2019, and a trustee is not required to file a statement for financial activity occurring on or after January 1, 2018.

The question has now risen: **If applicable school districts board or county commissioners court may post, or require the posting of, the personal financial statement on the district's website for public inspection.** (Please find the attached detailed document providing questions.)

I respectfully request that a clarification, via an AG Opinion, be rendered.

Sincerely,

A handwritten signature in black ink that reads "Joe C. Pickett".

Joe C. Pickett

Cc: State Representative Marquez, District 77

Attachment: Request for opinion, dated September 14, 2015, whether a school board covered by Section 11.0641 of the Texas Education Code can post trustee personal financial statements on its website, with related questions.

The State of Texas
House of Representatives



Joseph C. Pickett
El Paso • District 79

Capitol Office: 1W.5
P.O. Box 2910
Austin, Texas 78768-2910
512-463-0596
Fax: 512-463-6504

District Office:
1790 Lee Trevino
Suite 307
El Paso, Texas 79936
915-590-4349
Fax: 915-590-4726

REQUEST FOR OPINION

SEPTEMBER 8, 2015

**FROM REPRESENTATIVE JOE C. PICKETT,
DISTRICT 79**

**Re: Whether a School Board Covered by Section 11.0641 of the Texas
Education Code Can Post Trustee Personal Financial Statements on its
Website, and Related Questions**

TEXAS ATTORNEY GENERAL PAXTON VIA OPINIONS COMMITTEE:

Please accept this letter as a request, pursuant to Tex. Gov't Code § 402.042, for an opinion concerning whether a school board covered by Section 11.0641 of the Texas Education Code can post the personal financial statements filed by its member trustees on its website so that they are readily available to the public; and, if so, whether a board majority could require all trustee personal financial statements to be posted on the district website, even as to trustees who object to having their personal financial statements so posted.

QUESTION NO. 1: Can a board of trustees in a district that is covered by Section 11.0641 of the Texas Education Code direct that the personal financial statements filed by its member trustees be posted in a publicly accessible location on the district website?

Section 11.0641 of the Texas Education Code requires that in certain school districts, each member of the board of trustees shall file a personal financial statement, both with the board of trustees and with the applicable county commissioners court. Subsection (c) of Section 11.0641 provides as follows:

The provisions of Subchapter B, Chapter 572, Government Code, governing the contents, timeliness of filing, and public inspection of a statement apply to a statement filed under this section as if the trustee were a state officer and the commissioner's court of the county were the Texas Ethics Commission.

Chapter 572, Subchapter B, of the Texas Government Code governs personal financial statements filed by state officers with the Texas Ethics Commission. It includes Section 572.032, captioned "Public Access to Statements." Subsection (a) provides that financial statements, once filed, "are public records," and that the Commission "shall maintain the
AG Opinion Request

statements in separate alphabetical files and in a manner that is accessible to the public during regular office hours.” Subsection (b) provides as follows:

During the one-year period following the filing of a financial statement, each time a person requests to see the financial statement, excluding the commission or a commission employee acting on official business, the commission shall place in the file a statement of the person’s name and address, whom the person represents, and the date of the request. The commission shall retain that statement in the file for one year after the date the requested financial statement is filed.

Finally, Subsection (c) provides that after “the second anniversary of the date the individual ceases to be a state officer, the commission may and on notification from the former state officer shall destroy each financial statement filed by the state officer.”

In Opinion No. GA-1082 (2014), your predecessor examined Section 11.0641 of the Education Code and its interrelationship with Chapter 572, Subchapter B, of the Government Code in a different context, and concluded that the “El Paso County Commissioners Court lacks authority to impose additional burdens or conditions in excess of the existing statutory filing requirements chosen by the Legislature.” In light of this opinion, and the express language of Section 11.0641(c) of the Education Code, it is evident that the El Paso County Commissioners Court could not post the trustees’ personal financial statements on a website that would be readily accessible to the general public.

Please note, however, that Subsection (b) of Section 11.0641 of the Education Code requires filing of the personal financial statements both with the Commissioners Court and with the Board of Trustees, but Subsection (c) does not mention the board of trustees; it only mentions the Commissioners Court. Under the circumstances, it would thus appear that the restrictions placed on the Commissioners Court in Subsection (c) may not apply to the Board of Trustees, should it decide by majority vote to post the personal financial statements on its website in a manner that is readily available to the general public. We thus seek your opinion on whether the restrictive language of Subsection (c) of Section 11.0641 of the Education Code applies to a School District Board of Trustees as well as the County Commissioners Court.

QUESTION NO. 2: If the answer to Question No. 1 is “yes,” may the board of trustees by a majority vote require the posting of the personal financial statement of a trustee who objects?

Some may argue that the restrictions stated in Section 572.032 of the Government Code are designed to protect the privacy of officeholders, and to minimize the unauthorized use or misuse of their personal financial information, by keeping track of those persons who request copies of the financial statements. Some may argue that this language provides a personal right

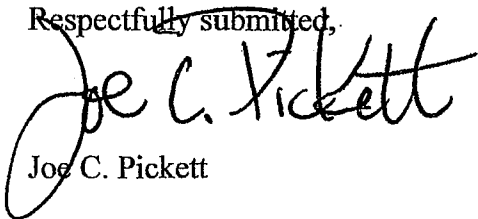
to the officers filing the financial statements to limit the access to the financial statements to the conditions stated in Section 572.032. Accordingly, we ask you to answer this additional question, assuming that the answer to Question No. 1 is "yes," can a board of trustees by a majority vote require all of the trustee financial statements to be posted in a portion of the district website that is readily accessible to the general public, even as to the financial statement of a trustee who objects to the posting of that trustee's financial statement?

QUESTION NO. 3: If the answer to Question No. 1 is "no," could the board of trustees nonetheless have the personal financial statements available through electronic means, provided that the requestor was required to first electronically submit the "person's name and address, whom the person represents, and the date of the request"?

Section 572.032 was codified in 1993, with statutory antecedents going back to 1973. Its language seems to contemplate paper records. With advances in computers and websites, it would appear that access to the personal financial statements through the district's website could be conditioned on the requestor providing "a statement of the person's name and address, whom the person represents, and the date of the request" in a discreet portion of the website, with said information by the requestor to be maintained by the district for the one-year period contemplated by Section 572.032(b), and with the personal financial statement being e-mailed to the requestor after providing the requested information. If your answer to Question No. 1 is "no," would this be a permissible way of providing information through the school district website, while still complying with the restrictions in Section 572.032?

Differing opinions have been expressed on the possible answers to these questions. We would appreciate your opinion on these issues at the earliest possible time so as to hopefully resolve the matter.

Respectfully submitted,



Joe C. Pickett